

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

JOHN ERICK CLARK,

Petitioner,

v.

BILL MAHONEY,

Respondent.

Case No. C08-5291 FDB/KLS

ORDER TO SHOW CAUSE WHY  
PETITION SHOULD NOT BE  
DISMISSED

Petitioner in this action is seeking federal habeas corpus relief pursuant to 28 U.S.C. § 2254. This case has been referred to United States Magistrate Judge Karen L. Strombom pursuant to Title 28 U.S.C. §§ 636 (b) (1) and Local MJR 3 and 4.

Petitioner purports to file a writ of habeas corpus, but the court's preliminary review of the documents filed by Petitioner reveals that Petitioner is not in custody. The records appended to Petitioner's filing reflect that he was last held in March of 2008. (Dkt. # 1, Exh. 4, pp. 7-8). Petitioner's mailing address is in care of the Postmaster General in Chehalis, Washington. (Dkt. # 1, p. 15).

The rules governing a petition for writ of habeas corpus filed in a United States district court under 28 U.S.C. § 2254 apply to persons *in custody* in violation of the Constitution pursuant to a

1 judgment of a state court. 28 U.S.C. § 2254. “[T]he essence of habeas corpus is an attack by a  
 2 person *in custody* upon the legality of that custody, and that the traditional function of the writ is to  
 3 secure release from illegal custody.” *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973).

4 If Petitioner is currently in custody under a state-court judgment, 28 U.S.C. § 2243 requires  
 5 that writs are to be directed “to the person having custody of the person detained.” The proper  
 6 respondent in a federal habeas corpus petition is the petitioner’s “immediate custodian.” *Demjanjuk*  
 7 *v. Meese*, 784 F.2d 1114, 1115 (D.C.Cir. 1986). A custodian “is the person having a day-to-day  
 8 control over the prisoner. That person is the only one who can produce ‘the body’ of the petitioner.”  
 9 *Guerra v. Meese*, 786 F.2d 414, 416 (D.C.Cir. 1986). Therefore, Petitioner’s custodian for  
 10 purposes of his habeas corpus petition challenging the execution of his Washington state sentence,  
 11 is the warden of the prison where he is currently confined. *See, e.g., Brittingham v. United States*,  
 12 982 F.2d 378 (9<sup>th</sup> Cir. 1992); *Dunne v. Henman*, 875 F.2d 244, 249 (9<sup>th</sup> Cir. 1989).

13 Petitioner has also failed to follow the form prescribed by the local rules of this court in  
 14 specifying all the grounds for relief available to him, in setting forth the facts supporting each  
 15 ground, and in stating the relief requested.

16 Accordingly, it is **ORDERED**:

- 17 (1) Petitioner must show cause why his petition should not be dismissed. To do so,  
 18 Petitioner must file an Amended Petition. To aid Petitioner, the Court Clerk is  
 19 directed to send Petitioner a form 2254 petition. Petitioner must state whether he is  
 20 in custody and name the warden of the prison where he is currently confined.  
 21 Petitioner must substantially follow the form in specifying the grounds for relief  
 22 available to him, stating the facts supporting each ground, and stating the relief  
 23 requested. Petitioner must file his Amended Petition on or before **June 27, 2008**. If  
 24 Petitioner fails to file an Amended Petition by **June 27, 2008** or the court determines  
 25 that the Amended Petition cannot go forward, the court will enter a report and  
 26 recommendation that the petition be dismissed.
- 27 (2) The Court Clerk is directed to send a copy of this Order to Petitioner.

28 DATED this 2nd day of June, 2008.

  
 Karen L. Strombom  
 United States Magistrate Judge